

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1522 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

BAI JABUBEN W/O SONAJI NAMAHI MALI FOR HERSELF & AS NEXT

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Appearance:

MS SIDDHI TALATI AGP for appellant

MR PV NANAVATI for Respondent No. 1

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/07/2000

ORAL JUDGEMENT

1. In this appeal the appellant/defendant - State of Gujarat has brought under challenge the judgment and decree dated August 1, 1980 rendered in Special Civil Suit No. 708 of 1977 by the learned City Civil Judge, Ahmedabad, by which he allowed the suit filed by the

respondent/plaintiff and recorded the decree as prayed for and resultantly declared that the impugned action of the appellant in evicting her from the suit plot is illegal, invalid, null and void and of no consequence. He also granted consequential relief of permanent injunction restraining the appellant from evicting the respondent from the suit plot under Section 202 of the Bombay Land Revenue Code, 1879 ('the Code' for short hereinafter).

2. The appellant herein is the original defendant and the respondent herein is the original plaintiff and for the sake of convenience the parties are hereinafter referred to in this judgment as 'the plaintiff' and 'the defendant'.

3. Before highlighting the controversy posed for my determination in this appeal it would be appropriate to have a look at the brief facts of the case of the plaintiff put-forth by her in the plaint.

4. Deceased husband of the plaintiff was given on lease a piece of land bearing No. 122 admeasuring about 200 sq. yds. situated opposite Kamal Cinema, Ramnagar, Sabarmati, Ahmedabad (hereinafter referred to as 'the suit plot') by the defendant prior to 20 years at the monthly rent of Rs.412.50 Ps. which was renewed from time to time. The said rent as well as the local fund in respect of the suit plot was regularly paid by him. Before his death on June 29, 1972, he erected construction on the suit plot. After the demise of her husband, the plaintiff came in possession of the suit plot. The plaintiff was served with a notice dated December 3, 1975 under Section 202 of the Code by the defendant for evicting her from the suit plot. By the said notice, the plaintiff was asked to handover the possession of the suit plot within eight days therefrom. The plaintiff, therefore, filed Civil Suit No. 169 of 1976 in the City Civil Court, Ahmedabad for annulment of the aforesaid notice of eviction issued under Section 202 of the Code. However, since the said suit was likely to fail on a technical ground of want of a statutory notice the plaintiff withdrew the suit on March 31, 1976 with permission to file fresh suit on the same cause of action. According to the plaintiff, she was given to understand from the office of the concerned authority of the defendant that she would be given an opportunity of hearing before a final order was passed. However, a peon in the office of the Sarkhej Division affixed a notice dated December 27, 1976 at about 11 P.M. intimating the her that the possession of the suit plot would be

recovered on the next day i.e., December 28, 1976 at 10.00 A.M. The plaintiff, therefore, filed Civil Suit No. 3978 of 1976 in the City Civil Court, Ahmedabad and obtained permanent injunction against the enforcement of the said notice of eviction. The said suit was also withdrawn on February 22, 1977 on the apprehension that it may also fail on a technical ground of want of statutory notice with a permission to file fresh suit. In the meantime the plaintiff served the required statutory notice dated January 3, 1977 to the defendant which was duly received by the defendant. The plaintiff, therefore, filed the present suit for the relief of permanent injunction restraining the defendant and/or its servants from taking possession of the suit plot from her pursuant to the notice dated December 27, 1976.

5. The defendant contested the suit on various grounds by filing written statement at Ex.6. It was, inter alia, contended that the action of eviction of the plaintiff from the suit plot was taken under Section 202 of the Code which was quite legal and valid. It was also contended that the plaintiff's suit was premature inasmuch as the plaintiff had not exhausted all the remedies. It was also specifically contended that if the plaintiff was aggrieved by the impugned action under Section 202 of the Code she could have preferred an appeal before the Gujarat Revenue Tribunal and, therefore, on the aforesaid premises it was prayed that the suit may be dismissed with costs.

6. The learned City Civil Judge, Ahmedabad, framed issues at Ex.9. The parties have not led any oral evidence and they opted to rely upon the documentary evidence only.

7. The learned City Civil Judge, Ahmedabad, on appreciation and evaluation of the documentary evidence produced on record and considering the submissions advanced at the bar by the respective advocates appearing for the parties came to the conclusion that the defendant had no authority to evict the plaintiff from the suit plot under the provisions of Section 202 of the Code and, therefore, the plaintiff was entitled to the relief prayed for by her in the plaint to which reference has been made in the earlier paragraphs of this judgment and resultantly he granted the relief. It is this judgment and decree which is impugned in this appeal.

8. Ms. Talati, learned A.G.P. for the appellant/plaintiff submitted that the defendant had authority to evict the plaintiff from the suit plot in

exercise of powers conferred under Section 202 of the Code and, therefore, notice dated December 27, 1976 issued to the plaintiff was in accordance with law and on the basis of the said notice the plaintiff was liable to be evicted from the suit plot. What was stressed by her was that the learned trial Judge has erroneously held that Section 202 of the Code was repealed by Section 19 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 ('the Act' for short hereinafter). It was also maintained by her that the learned trial Judge has misread and misinterpreted the provisions of Section 19 of the Act. It was emphatically submitted by her that the learned trial Judge has wrongly held that Section 19 of the Act repeals not only Section 202 of the Code but also many other corresponding law providing for the eviction of occupants from public premises. It was also contended that the learned trial Judge has also wrongly held that statutory notice under Section 80 of the Civil Procedure Code ('the CPC' for short hereinafter) was not required to be served to the defendant on the ground that the action of the defendant was without jurisdiction. It was also stressed by her that the learned trial Judge has erroneously held that the act purported to be done by such an officer in his official capacity will not cover any action which was outside the sphere of his duty and, therefore, also notice under Section 80 of the CPC was not required. On all the aforesaid premises she contended that the judgment and decree recorded by the learned trial Judge is erroneous and based on misinterpretation of the provisions of Section 19 of the Act and, therefore, the said decree is liable to be set aside by allowing this appeal and thereby dismissing the suit filed by the plaintiff.

9. Mr. Nanavati, learned advocate for the plaintiff maintained that the judgment and decree recorded by the learned trial Judge not only is in accordance with law but is based on correct interpretation of the statutory provisions of Section 19 of the Act, which, according to him, has repealed all the corresponding law providing for eviction of occupants from public premises which also includes the eviction order passed under Section 202 of the Code. It was also emphasised by him that the learned trial Judge has very correctly appreciated that since the action of the defendant was without jurisdiction no notice under Section 80 of the CPC was required to be served upon the defendant. It was emphatically submitted by him that the notice under Section 80 of the CPC was duly served to the defendant. It is true that the notice was defectively drafted but that fact ipso facto is not

sufficient to hold that notice under Section 80 was not served to the defendant. It is settled proposition of law that the intention of serving the notice under Section 80 of the CPC is to apprise the State Government of bringing action against it. Therefore, said notice is required to be liberally construed. In sum and substance, Mr. Nanavati supported the judgment and decree recorded by the learned trial Judge throughout. According to him, no error of law or fact has been committed by the learned trial Judge in recording the judgment and decree requiring interference at the hands of this Court and he prayed for the dismissal of the appeal by confirming the judgment and decree recorded by the trial Court.

10. There is no dispute that prior to 20 years deceased husband of the plaintiff was granted the suit plot on lease at the monthly rent of Rd.412.50 Ps. which was renewed from time to time. There is also no dispute that he was paying rent as well as local fund regularly. There is also no dispute that he erected construction on the suit plot before his death on June 29, 1972 and since then the plaintiff has been in possession of the suit plot. The plaintiff was served with a notice dated December 3, 1975 under Section 202 of the Code whereby the plaintiff was asked to handover the possession of the suit plot and, therefore, the plaintiff had filed Civil Suit No. 169 of 1976 which was withdrawn by her as she apprehended that the said suit would fail on a technical ground for want of statutory notice. Thereafter again a notice dated December 27, 1976 was served by the defendant to the plaintiff asking her to handover possession of the suit plot on the next day. The plaintiff, therefore, again filed Civil Suit No. 3978 of 1976 which also came to be withdrawn by her on the apprehension that it would fail on a technical ground for want of statutory notice. In the meantime the plaintiff served to the defendant the required statutory notice under Section 80 of the CPC and thereafter she filed the present suit for the reliefs claimed in the plaint to which reference has been made in earlier paragraphs of this judgment.

11. The material question which falls for my determination in this appeal is as to whether the notice served by the defendant to the plaintiff under the provisions of Section 202 of the Code can be acted upon as the said provisions are repealed by the provisions of Section 19 of the Act. In order to answer the aforesaid question it would be appropriate to refer to Section 19 of the Act which reads thus:

"19. The Bombay Government Premises (Eviction) Act, 1955 and any other corresponding law providing for the eviction of occupants from public premises are hereby repealed:

Provided that anything done or any action taken (including rules or orders made, notices issued, evictions ordered or effected, damages assessed, rents or damages or costs recovered and proceedings initiated) or purported to have been done or taken under the Act or law hereby repealed shall be deemed to have been done or taken under the corresponding provisions of this Act, and shall be deemed to be, and to have always been, as valid and effective as if such thing or action was done or taken under the corresponding provisions of this Act, as if this Act had been in force when such thing was done or such action was taken."

On having look at the aforesaid provisions of Section 19 of the Act it is abundantly clear that Section 19 of the Act repeals not only the Bombay Government Premises (Eviction) Act, 1955 but also any other corresponding law providing for the eviction of occupants from public premises. It cannot be disputed that the Act has come into force with effect from June 26, 1973 by virtue of Section 1 (3) of the Act. As observed in earlier paragraphs of this judgment, there cannot be any dispute that the suit plot belongs to the defendant. It is also not in dispute that a conjoint reading of the definitions of the words "land", "premises" and "public premises" given respectively in clauses (c), (d) and (f) of Section 2 of the Act would go to show that the suit plot is a "public premises" for the purposes of the Act. Ms. Talati for the appellant could not point out as to how the suit plot does not answer the definition of "public premises" as given in Section 2 (f) of the Act. In view of the aforesaid statutory provisions of the Act, I am of the opinion that the suit plot is a 'public premises' as defined in the Act.

12. It may be appreciated that Section 202 of the Code provides for the manner in which the Collector has to proceed for eviction of any person wrongfully in possession of any Government land. The word "land" has been defined in Section 3 (4) of the Code and this definition is in pari-materia with that contained in section 2 (c) of the Act. It is thus clear that Section 202 of the Code provides for eviction of a person

wrongfully in possession of Government land. It is also not in dispute that wrongful possession of Government land is used in Section 202 of the Code to convey the meaning of unauthorised occupation of such Government land. This provision would, therefore, fall within the ambit of the term "corresponding law" for the purposes of Section 19 of the Act. Once it is found that Section 202 of the Code also provides for eviction of an occupant from Government land which would mean a public premises for the purposes of the Act, Section 19 of the Act would come into play and would repeal such provision. The effect of this repeal would be that no action can be taken under Section 202 of the Code. It may be clarified that if the plaintiff is required to be evicted from the suit plot on the ground that she is in unauthorised occupation it is open to the State to proceed against her under the relevant provisions of the Act but it is not open to the State to take action under Section 202 of the Code particularly when on coming into force of the Act Section 202 of the Code came to be repealed. Seen in the above context, I am of the opinion that the impugned action of the concerned authority for eviction of the plaintiff from the suit plot is taken without any power, authority or jurisdiction and the same cannot, therefore, be sustained at law.

13. After having held that the impugned action or impugned notice issued by the defendant is without any power, authority or jurisdiction, the next question which falls for my determination is as to whether the plaintiff was entitled to the relief of permanent injunction as prayed for.

14. Now the dispute centres around the service of statutory notice. According to Ms. Talati, learned A.G.P. notice under Section 80 of the CPC though served to the defendant was a defective one and hence in the eye of law there was no notice served on the defendant and without serving statutory notice the suit was bad and not maintainable and, therefore, in the absence of statutory notice no decree could have been passed. She, therefore, contended that on this ground also the decree recorded by the trial Court is required to be set aside.

15. In reply to the aforesaid contention, Mr. Nanavati for the defendant submitted that notice under Section 80 of the CPC was served on the defendant. He further submitted that it is true that notice was defectively drafted but it is required to be liberally construed as the intention of service of notice under Section 80 of the CPC is to apprise the Government about

the intended action on the part of the plaintiff. He emphatically submitted that since the act done by the officer of the defendant was not in his official capacity same would not cover any action which is outside the sphere of his duty and, therefore, also notice under Section 80 of the CPC was not required to be served.

16. Now on having perusal of the notice under Section 80 of the CPC, which is produced at Ex.12, it is true that it is not happily drafted. It also does not answer the requirement of Section 80 of the CPC. Without entering into the controversy whether notice at Ex.12 could not answer the requirement of Section 80 of the CPC I am of the opinion that it is settled principle of law that the words "act purporting to be done by such Public Officer in his official capacity" will not cover any action which is outside the sphere of his duty. It is thus clear that in the case of an action taken by a Public Officer without jurisdiction and outside the sphere of his duty, no notice under Section 80 of the CPC would be necessary. I am fortified in my above view by the judgments of the Supreme Court in the case of Poona City Municipal Corporation v. Dattatraya Nagesh Deodhar, AIR 1965 SC 555 and Bharat Kala Bhandar Ltd v. Municipal Committee, Dhamangaon, AIR 1966 SC 249. Seen in the above context, I am of the opinion that it was not necessary to the plaintiff to serve statutory notice under Section 80 of the CPC before filing the suit. I, therefore, hold that the suit was not bad for want of required statutory notice.

17. In view of the aforesaid discussion, I am of the opinion that no illegality either on facts or in law is committed by the learned trial Judge in recording the decree. On the facts and in the circumstances of the case, no other conclusion except the one reached by the learned trial Judge was possible and hence it requires affirmation by this Court.

18. For the foregoing reasons, the appeal fails and accordingly is dismissed, however, with no order as to costs.

11.7.2000. (A.M. Kapadia, J.)

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